

## Article - Transportation

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§15–207.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Coerce” means to compel or attempt to compel by threat of harm, breach of contract, or other adverse action or consequences, including the loss of any incentive or other benefit made available to other dealers of the same line make in the State.

(ii) “Coerce” includes to act in a manner that violates § 15–206.1 of this subtitle.

(iii) “Coerce” does not include to argue, urge, recommend, or persuade.

(3) “Require” means to impose upon a dealer a provision not required by law or previously agreed to by a dealer in a franchise agreement, excluding business decisions made to comply with the requirements of this title by a manufacturer, distributor, or factory branch which are uniformly applied to all Maryland dealers in new vehicles of the manufacturer, distributor, or factory branch.

(b) A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, affiliate, or representative, may not coerce any dealer to make any agreement with the manufacturer, distributor, or factory branch or their agent, employee, affiliate, or representative.

(c) A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, affiliate, or representative, may not coerce any dealer to order or accept delivery of any vehicle, any equipment, parts, or accessories for a vehicle, or any other commodity that is not required by law or by the dealer’s franchise or that was not ordered voluntarily by the dealer.

(d) A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, affiliate, or representative, may not require or coerce a dealer, by franchise agreement or otherwise, or as a condition to the renewal or continuation of a franchise agreement, to:

(1) Exclude from the use of the dealer’s facilities a dealership for which the dealer has a franchise agreement to utilize the facilities; or

(2) Materially change the dealer's facilities or method of conducting business if the change would impose substantial financial hardship on the business of the dealer.

(e) (1) The provisions of this subsection apply notwithstanding the terms of any franchise agreement or agreement related to a franchise.

(2) A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, affiliate, or representative, may not require or coerce a dealer to adhere to performance standards that are not applied uniformly to other similarly situated dealers.

(3) (i) Whether or not uniformly applied to other similarly situated dealers, an assigned market area or a performance standard, sales objective, or program for measuring dealership performance that may have a material effect on a dealer, including the dealer's right to a benefit or payment under any incentive or reimbursement program, and the application of the standard, sales objective, or program by a manufacturer, distributor, or factory branch shall:

1. Be fair, reasonable, and equitable;
2. Be based on accurate information; and
3. Include considerations of the demographic characteristics and consumer preferences of the population in the dealer's assigned market area, including:
  - A. Car and truck preferences of consumers; and
  - B. Geographic characteristics, such as natural boundaries, road conditions, and terrain, that affect car and truck shopping patterns.

(ii) A dealer that claims that the assignment of a market area or application of a performance standard, sales objective, or program for measuring dealership performance is unfair or unreasonable due to the manufacturer, distributor, or factory branch failing to reasonably consider demographic characteristics of the population in the dealer's assigned market area, including car and truck preferences of consumers, or due to the geographic characteristics, such as natural boundaries, road conditions, and terrain, that affect car and truck shopping patterns in the dealer's assigned marketing area, may file a claim in a court of competent jurisdiction to determine whether the design of the assigned market area or the application of the performance standard, sales objective, or program is unfair or unreasonable under this paragraph.

(iii) A manufacturer, distributor, or factory branch has the burden of proving that the design of the assigned market area, or the performance standard, sales objective, or program for measuring dealership performance is fair and reasonable under this paragraph.

(4) (i) If the performance standard is based on a survey, it must be shown that:

1. The survey was designed with experts;
2. The proper universe was examined;
3. A representative sample was chosen; and
4. The data was accurately reported.

(ii) The manufacturer, distributor, or factory branch shall establish the objectivity of the survey process and provide this information to any dealer of the same line make covered by the survey on request.

(f) A franchise agreement or other contract offered to a dealer by a manufacturer, distributor, or factory branch may not contain any provision requiring a dealer to pay the attorney's fees of the manufacturer, distributor, or factory branch related to disputes involving the franchise.

(g) (1) (i) If the dealer is an entity other than an individual, the dealer shall designate an individual to represent the dealer to do business with the manufacturer, distributor, or factory branch.

(ii) Approval of the individual may not be withheld by the manufacturer, distributor, or factory branch unless the individual is unfit due to lack of good moral character or fails to meet reasonable general business experience requirements.

(2) A dealer shall have a reasonable amount of time to:

(i) Designate a representative or a successor if a change is required for any reason; and

(ii) Obtain approval of the representative or successor designated under item (i) of this paragraph, including time for a hearing, in the event of any objection by the manufacturer, distributor, or factory branch.

(3) At a hearing resulting from an objection to the approval of the designated individual, the manufacturer, distributor, or factory branch has the burden of proving that the designated individual is not of good moral character or fails to meet reasonable general business experience requirements.

(h) (1) (i) Any consumer rebates, dealer incentives, price or interest rate reductions, or finance terms that a manufacturer, distributor, or factory branch offers or advertises, or allows its dealers to offer or advertise, shall be offered to all dealers of the same line make.

(ii) Any manufacturer, distributor, or factory branch that denies the benefit of any consumer rebates, dealer incentives, price or interest rate reductions, or finance terms to a dealer on the basis that the dealer failed to comply with performance standards has the burden of proving that the performance standards comply with the provisions of this section.

(2) Unless a dealer violates a State or local law intended to protect the public, a manufacturer, distributor, or factory branch may not:

(i) Require a dealer to alter or replace an existing dealership facility; or

(ii) Deny, or threaten to deny, any benefit generally available to all dealers for a dealer's failure to alter or replace an existing dealership facility.

(3) A manufacturer, distributor, or factory branch may not reduce the price of a motor vehicle charged to a dealer or provide different financing terms to a dealer in exchange for the dealer's agreement to:

(i) Maintain an exclusive sales or service facility;

(ii) Build or alter a sales or service facility; or

(iii) Participate in a floor plan or other financing arrangement.

(i) A manufacturer, distributor, or factory branch may offer rebates, cash incentives, or other promotional items for the sale of a vehicle by its dealers if:

(1) The same rebate, cash incentive, or promotion is offered to all of its dealers of the same line make; and

(2) Any rebate, cash incentive, or promotion that is based on the sale of an individual vehicle is not increased for meeting a performance standard unless the standard is reasonable considering all existing circumstances.

(j) A manufacturer, distributor, or factory branch may not discriminate among its dealers in any program that provides assistance to its dealers, including Internet listings, sales leads, warranty policy adjustments, marketing programs, and dealer recognition programs.

(k) (1) This subsection does not apply to:

(i) The purchase or procurement of:

1. Moveable displays;
2. Brochures or other promotional materials;
3. Special tools and training as required by the manufacturer;
4. Parts for repairs made under warranty obligations of a manufacturer, distributor, or factory branch; or
5. Any goods or services for which a manufacturer, a distributor, a factory branch, or an affiliate provides a credit, stipend, payment, or reimbursement to the dealer that covers all or a substantial portion of the dealer's program costs;

(ii) Optional programs;

(iii) A program, or the renewal or modification of a program, in existence on October 1, 2014; or

(iv) An agreement between the manufacturer, distributor, factory branch, or affiliate and the dealer that is directly related to the dealer's completion of a program if separate and valuable consideration has been offered to the dealer and accepted.

(2) (i) Subject to subparagraph (ii) of this paragraph, a manufacturer, distributor, factory branch, or one of its affiliates may not, directly or through an agent, an employee, an affiliate, or a representative, require or coerce by agreement, program, or incentive provision, a dealer to purchase goods or services from a vendor that is selected, identified, or designated by the manufacturer, distributor, factory branch, or one of its affiliates.

(ii) A manufacturer, distributor, factory branch, or one of its affiliates may offer a dealer the option to obtain goods or services under this

subsection of substantially similar quality and design from a vendor chosen by the dealer subject to the advanced approval of the manufacturer, distributor, factory branch, or one of its affiliates.

(3) A manufacturer, distributor, factory branch, or one of its affiliates may not unreasonably withhold the approval required under paragraph (2) of this subsection.

(4) Nothing in this subsection may be construed to allow a dealer or vendor to:

(i) Directly or indirectly eliminate or impair in any way a manufacturer's intellectual property, trademark, or trade dress rights; or

(ii) Erect or maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer, distributor, factory branch, or one of its affiliates.

(5) (i) A manufacturer, distributor, factory branch, or one of its affiliates may not penalize a dealer for failure to participate in an optional program.

(ii) Withholding the benefits of an optional program in which the dealer failed to participate may not be construed to be a penalty imposed by the manufacturer, distributor, factory branch, or affiliate.

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